

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

KENDRA L. JOHNSON,

Plaintiff,

v.

Civil Action No. 3:23cv807

EQUIFAX INFORMATION SERVICES,
LLC, et al.,

Defendants.

MEMORANDUM ORDER

The COMPLAINT in this action (ECF No. 1) was filed on November 27, 2023. The COMPLAINT named four entities as defendants: Equifax Information Services, LLC; Experian Information Solutions, Inc.; Trans Union, LLC; and Fulton Bank National Association. A note in the docket sheet dated November 28, 2023 advises that the "[f]iling attorney is instructed to file the proposed summons (in non-fillable format) to serve the defendant, or if waiving service, to notify the court in writing by electronically filing the notice."

When no action had been taken by January 26, 2024, the Clerk contacted plaintiff's counsel by email and asked him to "submit the proposed summons in this matter as soon as possible." On January 29, 2024, proposed summons for all four defendants were noted on the docket (ECF Nos. 2, 3, 4 and 5). Because Fulton Bank

National Association filed a Motion to Dismiss the case as to it,¹ the Court assumes that Fulton Bank, N.A. was in fact served with process. The same can be said with respect to the defendant, Trans Union, LLC because it filed a Consent Motion seeking an extension of time to answer the Complaint.²

However, by March 26, 2024, the record reflected no appearance by the defendants, Equifax Information Services, LLC or Experian Information Solutions, Inc. Nor did it appear from the record, that they had been served with process.

Accordingly, on March 26, 2024, the Clerk issued a NOTICE OF THE CLERK'S INTENTION TO PROCEED WITH ABATEMENT (ECF No. 13) as to those two defendants. The proposed abatement was to occur fifteen days later (April 10, 2024) "unless the plaintiff can show the Court good cause why such service was not made within the 90-day period." (ECF No. 13). Thereafter, Plaintiff's counsel filed, as to all four defendants, a document entitled MEMORANDUM (ECF No. 18) in which Plaintiff's counsel stated that he had "filed affidavits for service that were served on time on three of the four defendants: Experian Information Solutions, TransUnion, and Fulton Bank National Association." Also therein, the Plaintiff's counsel acknowledged "failure to obtain service of process on

¹ FULTON BANK N.A.'S MOTION TO DISMISS UNDER RULE 12(b)(6) OF THE FEDERAL RULES OF CIVIL PROCEDURE (ECF No. 7).

² TRANS UNION LLC'S CONSENT MOTION FOR EXTENSION OF TIME TO ANSWER OR OTHERWISE RESPOND TO PLAINTIFF'S COMPLAINT (ECF No. 10).

Equifax Information Services [sic], through an error by her counsel." (ECF No. 18).

The documents referred to in the MEMORANDUM as "Affidavits of Service" (ECF Nos. 14, 15, 16 and 17) are not Affidavits of any kind. They are merely blank SUMMONS IN A CIVIL ACTION that were prepared for each defendant, and, as to each defendant, the blank SUMMONS IN A CIVIL ACTION does not reflect that service has been achieved. Indeed, it appears that the so-called "Affidavits of Service" (ECF Nos. 14, 15, 16 and 17) in fact are just the "proposed summonses" reflected in ECF Nos. 2, 3, 4 and 5.

Thus, the record does not show that the defendants, Equifax Information Services, LLC and Experian Information Solutions, Inc., were timely served. Nor has counsel for the Plaintiff shown good cause why service was not timely made as to those two defendants. Nor has counsel for the Plaintiff provided any reason why, as to those defendants, the case should not be dismissed without prejudice.

Accordingly, it is hereby ORDERED that this action is dismissed without prejudice as to Equifax Information Services, LLC and Experian Information Solutions, Inc.

It is so ORDERED.

/s/ *REP*

Robert E. Payne
Senior United States District Judge

Richmond, Virginia
Date: April 16, 2024